

Message Text

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ACTION L-03

INFO OCT-01 EA-07 ISO-00 SS-15 OES-06 DLOS-06 SAL-01 IO-13
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C O N F I D E N T I A L TOKYO 0648

E.O. 11652: GDS
TAGS: PLOS, PFOR, PBOR, ICJ, CA, KS
SUBJECT: POSSIBLE ICJ SUBMISSION ON OFFSHORE BOUNDARY QUESTION

REF: STATE 5301 (NOTAL)

SUMMARY: LIMITED INFORMATION IN POST FILES INDICATES THAT GOJ STRONGLY FAVORS EQUIDISTANCE PRINCIPLE AS BASIS FOR DETERMINING MARITIME BOUNDARIES, AND SUGGESTS THAT LONG-TIME GOJ ADVISOR ON LOS MATTERS, INTERNATIONAL COURT JUSTICE SHIGERU ODA, MORE LIKELY TO FIND MERIT IN CANADIAN POSITION ON US-CANADA OFFSHORE BOUNDARY DISPUTE. END SUMMARY.

1. REFTEL ASKS POST FOR INFORMATION ON JAPANESE INTERNATIONAL COURT OF JUSTICE MEMBER SHIGERU ODA AND ON JAPANESE POSITION ON ECONOMIC ZONE/CONTINENTAL SHELF DELIMITATION.
2. SHIGERU ODA WAS ELECTED TO THE ICJ IN 1975 WITH STRONG JAPANESE DIPLOMATIC BACKING. HE IS JAPAN'S PREMIER ACADEMIC AUTHORITY ON LOS MATTERS. PRIOR TO TAKING SEAT ON ICJ, ODA WAS ADVISOR TO JAPANESE DELS AT FIRST THREE SESSIONS OF THIRD LOSC. HIS NOMINATION FOR ICJ SEAT WAS UNDERSTOOD IN TOKYO TO BE IN PART REWARD FOR DISTINGUISHED SERVICE TO FONOFF AND IN PART "INSURANCE" IN EVENT JAPAN PARTY TO LOS ACTION BROUGHT BEFORE COURT.

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3. MOST RECENT INR/OIL/B BIO REPORT IN EMBASSY FILES ON ODA IS DATED APRIL 1, 1974. SUPPLEMENTARY HOLDINGS INDICATE THAT HE HAS BEEN, INTER ALIA, COUNSEL TO FRG IN NORTH SEA CONTINENTAL SHELF CASES (1969) AND LEGAL CONSULTANT TO ECAFE/CCOP IN 1969 AND 1972.

4. ODA WAS AMONG FIRST HERE TO CALL FOR FLEXIBLE AND PRAGMATIC JAPANESE ACCOMMODATION TO LDC DEMANDS FOR MODIFICATION OF

TRADITIONAL REGIME FOR THE SEAS. HE HAS UNDOUBTEDLY BEEN INFLUENTIAL IN SHAPING JAPANESE POSITIONS ON BROAD RANGE OF LOS ISSUES, INCLUDING DELIMINATION OF OFFSHORE BOUNDARIES. ON LAST POINT, HOWEVER, POST FILES INCLUDE NO SPECIFIC COMMENT BY ODA.

5. AN INSULAR NATION, JAPAN HAS NO BOUNDARIES WITH ADJACENT STATES, BUT IT WILL, ASSUMING ERA OF 200- MILE ECONOMIC ZONE, HAVE TO RESOLVE PARTICULARLY INTRACTABLE DEMARCATION PROBLEMS WITH OPPOSITE STATES -- THE TWO KOREAS, CHINA AND THE USSR -- AND ALSO WITH US DEPENDENCY, COMMONWEALTH OF THE MARIANAS. INASMUCH AS JAPANESE CONTINENTAL SHELF IS INSIGNIFICANT, JAPAN HAS IN LOSC SUPPORTED EQUIDISTANCE PRINCIPLE AS BASIS FOR DETERMINATION OF BOUNDARIES. IN PRACTICE, HOWEVER, GOJ MODIFIED STAND IN NEGOTIATING DIVISION OF WATERS BETWEEN JAPAN AND ROK. AS WE RECALL, FACED WITH SOUTH KOREAN CLAIM TO ENTIRE CONTINENTAL SHELF, GOJ AT LENGTH NEGOTIATED 1974 AGREEMENT FOR JOINT DEVELOPMENT OF MINERAL RESOURCES, ESPECIALLY PETROLEUM, IN DISPUTED EAST CHINA SEA ZONE BETWEEN OKINAWA AND ROK'S CHEJU ISLAND. ROK RATIFIED PROMPTLY, BUT GOJ HAS YET TO GET TREATY OUT OF DIET COMMITTEE. SOME OF OPPOSITION HERE TO ROK-JAPAN PACT IS SIMPLY KNEE-JERK ANTIPATHY TO SOUTH KOREAN REGIME. HOWEVER, PRAGMATIC CRITICS ARE ALSO NUMEROUS; THEY MAINTAIN THAT GOJ COMPROMISE ON EQUIDISTANCE PRINCIPLE, IF APPROVED, WOULD UNDERCUT FUTURE EFFORT TO NEGOTIATE EQUIDISTANT DIVISION OF SEAS BETWEEN JAPAN AND OTHER OPPOSITE STATES, ESPECIALLY CHINA. JAPAN-ROK PACT, WHICH NEW PM FUKUDA HAS VOWED TO PUSH (AND WHICH ROK THREATENS TO DENOUNCE IF HE DOES NOT), NOW LOOMS AS ONE OF MOST CONTENTIOUS ITEMS ON DIET CALENDAR.

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6. WITH REGARD TO BOTTOM-LINE QUESTION, HOW ODA MIGHT VOTE ON US-CANADA BOUNDARY DISPUTE IF IT WERE TAKEN TO ICJ, ABOVE SUGGESTS HE WOULD BE SYMPATHETIC TO GOJ GUIDANCE, IF GIVEN, AND WOULD BE DISPOSED TOWARD CANADIAN POSITION. WE BELIEVE ODA'S PERSONAL AND JURIDICAL INTEGRITY TO BE ABOVE REPROACH, HOWEVER, AND THINK FAR MORE IMPORTANT FACTOR IN HIS OPINION WOULD BE MERITS OF CASE.

7. ODA HAS PUBLISHED EXTENSIVELY ON LOS QUESTIONS, AND DEPARTMENT'S SEARCH OF LAW LIBRARY INDEX MAY WELL TURN UP STATEMENT OF ODA'S VIEWS ON DEMARCATION ISSUES.
HODGSON

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